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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/669,171

09/23/2003

Brian Gonsalves

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EXAMINER

HUYNH, BA

ART UNIT

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2179

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/669,171	<b>Applicant(s)</b> GONSALVES ET AL.	
	<b>Examiner</b> Ba Huynh	<b>Art Unit</b> 2179	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-26 and 40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-26, 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

This application contains claims 27-39 drawn to an invention nonelected in the reply filed on 3/26/08. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 103***

1. Claims 16-26 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent application publication 2007/0124448 (Baum et al), in view of US patent application publication 2003/0028890 (Swart et al).

- As for claims 16, 24, 40: Baum et al (hereinafter Baum) teach a computer implemented method and corresponding apparatus of network services comprising receiving a request for connection to a video content source in a first network (WAN, 0070) of multiple networks (0082, 0125, 0126), the video content source having a unique address (inherently include in the teaching of web site and online databases), initiating formation of at least a portion of point-to-point protocol communication (0082, 0125, 0126 wherein PPPoE reads on the claim language "at least a portion of PPP protocol. Note also Swart's link 205 of figures 2 and 3) between a user device in a second network (LAN, 0070) of the multiple networks and the video content source (0116, 0126). Users are billed for the services provided (0133). Baum further teaches monitoring subscriber's bandwidth utilization (0138). Baum fails to clearly

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teach billing subscriber based on tracking a metric associated with communication of the information stream. However it would have been obvious to one of skill in the art that services provided have to be track in order to accurately charge the user.

Implementation of tracking a metric associated with communication of the information stream for billing is well known and is disclosed by Swart (20, 59, 72). It would have been obvious to one of skill in the art to combine Swart's teaching of the metric tracking to Baum for billing customer. The metric is selected from a group consisting of information throughput and connection duration (0020, 0056, 0059, 0109). The system further comprises a billing engine to generate an invoice based on the metric (0059, 0072).

- As for claim 17: Although Baum&Swart clearly teach billing the user (0045, 0088). The combine teaching fails to clearly teach notifying the consumer the cost of service and receiving payment prior to service. However official notice is taken that implementation of notifying the consumer the cost of service and receiving payment prior to service would have been an obvious method of doing business.
- As for claim 18: A telephone interface associated with the access engine (Baum's 0006, Swart's 0048). User input can be received via a voice recognition system. Thus the conversion of voice input to a request for connection appears inherently include, or even if it is not, it would have obvious to one of skill in the art in light of Baum&Swart's teaching of the voice recognition system and the telephone interface for providing a supplement input interface.

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- As for claim 19: The system further includes a list of video content sources each having a unique address (0030, 0125, 0133). The service engine operable to facilitate communication PPP over Ethernet communication link (0116, 0126, 0130).  
Notifying the consumer the cost of service and receiving payment prior to service would have been an obvious method of doing business.
- As for claim 20: The metric includes information throughput and connection duration (Swart's 0020, 0056, 0059, 0109). Tracking quality of service (Baum's 0027, 0094) and peak bandwidth (Baum's 0138) for billing would have been obvious method of doing business in video transmission.
- As for claim 21: The system supports constant bit rate and variable bit rate ("unspecified bit rate", 0006, 0048, 0143). In light of Baum's, implementation of converting variable bit rate to constant bit rate stream would have been obvious for better video quality and bandwidth control.
- As for claim 22: It is implicitly included that the video content source toggle from not output to output state responsive to an accepted video transfer request.
- As for claim 23: At least a portion of the request comprises a format selected from the group consisting of a dual tone multi-frequency signal, a TCP/IP packet, and a voice signal (Baum's 0041, 0078, 0079, 0083; Swart's 0045, 0064, 0074, 100).
- As for claim 25: In light of the rejection set forth in claim 1, it is inherently included in that data indicating a plurality of connection options is sent to the video content source in a negotiation process (Baum's 0074, 0125).

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- As for claim 26: Connection information is stored in a network management system.

The connection information includes the address of the video content source and at least one connection rule (Baum's 0074, 0090, 0116, 0126).

### ***Response to Arguments***

Applicant's arguments filed 7/25/08 have been fully considered but they are not persuasive.

Remarks:

37 CFR 1.104 requires that when a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. The Baum and Swart references clearly describe its inventions to the public and had met the enablement and description requirements of the 35 USC 112. In addition, each particular part of the references which read on the pending claims' limitations was clearly identified by the examiner. Thus the Office action sufficiently and clearly addressed all limitations of the pending claims. In addition, as a policy of the Office, the applicant is always welcomed to contact and discuss with the examiner about any unclear issue in the Office action.

In response to the argument that the combine references do not teach initiating at least a portion of PPP protocol communication link between the user network and the video source network, the limitation is disclosed by Baum in 0082, 0125, 0126 wherein the PPPoE is "at least a portion of point-to-point protocol communication link" between the user LAN network and the

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source WAN network. Swart also teaches “at least a portion of point-to-point protocol communication link” between the user network and the source network in figs 2 and 3, wherein link 205 directly connect the user and the source.

As for claim 21, in response to applicant's argument that it is not obvious to modify Baum for converting variable bit rate stream into a constant bit rate stream, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner hold that converting variable bit rate stream to constant bit rate stream would have been obvious to one of skill in the art for the quality of the video. The conversion limitation, briefly mentioned in the applicant's own specification as “The system may also be capable of directing the conversion of an outputted variable bit rate stream into a constant bit rate stream” (the spec, par 0052). The limitation, without being fully described as required by 35 USC 112-1<sup>st</sup>, is an indication that implementation of the conversion would have been obvious and within the level of one skilled in the art.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ba Huynh whose telephone number is (571) 272-4138. The examiner can normally be reached on Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 571-272-4847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would



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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ba Huynh/

Primary Examiner, Art Unit 2179